

Attached please find a letter from the Metropolitan Museum of Art regarding the recently passed fractional interest gift provision that was included as part of the Pension Protection Act of 2006.

Please contact me if you have any questions.

Rebecca Gideon

Assistant Counsel
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, NY 10028

October 31, 2006

Honorable Charles E. Grassley, Chairman
Honorable Max Baucus, Ranking Member
Committee on Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Honorable William M. Thomas, Chairman
Honorable Charles B. Rangel, Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Fractional Interest Gifts of Works of Art

Gentlemen:

I am writing on behalf of The Metropolitan Museum of Art to express our concern regarding the recently passed fractional interest gift provision that was included as part of the Pension Protection Act of 2006. Fractional gifts are an effective way to encourage individuals to give art to a museum, assuring that major works of art become available to the public, rather than remaining in private hands. Although we understand your concerns regarding potential tax abuse, we believe that the current legislation can be modified either through the Tax Technical Corrections Act of 2006 or in future amendments to both prevent abuse and encourage gifts which benefit the public. We would like to bring to your attention some of the issues that we anticipate will result from this legislation and our suggested modifications for your consideration.

1. Transactional clarification. We suggest that the new law should not apply to gifts of fractional interests begun prior to August 17, 2006. We recommend that donors who have already made a gift of a fraction interest in a work of art should be grand-fathered as a matter of transitional clarification.
2. Require mandatory pledge rather than transfer within 10 years. Under previous law there was no time limit on when the final portion (100%) of a partial gift had to be given to a museum. The donor had the option of giving a museum the remaining portion by small increments, larger increments or at the donor's death. The new law requires that charities receiving a fractional interest after August 17,

2006 must take complete ownership of the item within 10 years of the initial fractional contribution, or the death of the donor, whichever is first. We suggest that the 10-year requirement be eliminated and replaced by a mandatory pledge by the donor that the remainder of the work will be transferred to the museum either during the donor's lifetime or at the donor's death. Donors and museums will then have the ability to negotiate the time period, which would allow donors to avail themselves of the flexibility of giving the gift over their entire lifetime if that best suits the donors' financial and personal needs and allow the museum to consider its varied needs. We believe current law will eliminate or hinder gifts from younger donors.

3. Allow the donor to deduct the current fair market value of each fractional interest. Under previous law the donor would be required to obtain a qualified appraisal to determine the amount of the deduction (i.e., the fair market value) of each portion given to a museum, allowing the donor to obtain a larger deduction for later fractional gifts if the work of art appreciated in value. Under current law, the amount of the deduction the donor receives would be limited (i.e., in the case of any additional contribution, the fair market value of such contribution will be determined by using *the lesser of* (i) the fair market value of the property at the time of the initial fractional contribution, or (ii) the fair market value of the property at the time of the additional contribution). In keeping with the spirit of the previous law, we suggest that donors of a fractional gift should be allowed to use a qualified current appraisal, perhaps with mandatory review of the appraisal by the IRS Art Advisory Panel for works valued over a certain amount, rather than the historic value as now required. As the law stands now, if a donor were to initiate a fractional gift after the effective date of the legislation, the second fractional interest given could trigger either gift or estate tax consequences for the donor due to the difference between the lower deduction and the actual fair market value (assuming the work has increased in value). We do not believe this was intended or contemplated and recommend it be considered as a possible technical correction.

We hope that these suggestions are helpful and can be addressed in either the Tax Technical Corrections Act of 2006 or in future legislation. If you have any questions, please contact me at (212) 570-3902 or Sharon Cott, Senior Vice President, Secretary and General Counsel at (212) 570-3940.

Sincerely,

Philippe de Montebello